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WORK FOR THE JUDICIAL SECTION TO DO.

The United States Circuit Court of Appeals for the Fourth Circuit in the recent case of Waldron v. The Director General, April 6th, 1920, issued its declaration of freedom from the influence of State Courts in these words:

"Rique's Ad'r v. C. & O. B. R. Co., 104 Va. 476, 51 S. E. 730, and Anderson v. B. & O. R. Co., 74 W. Va. 17, 81 S. E. 579, are relied on as holding that the duty is on the shipper who receives cars from a carrier to be loaded to inspect them for the protection of his employes to the exemption of the carrier. The first case cited does not expressly so hold. The fact that the injury was to the property of third persons not employes of the shipper may distinguish the second case. But if it be conceded that both cases hold the doctrine contended for, we think it is opposed to reason and the great weight of authority. The question being one of common law and general jurisprudence, a Federal Court must determine it for itself."

Conceding the Federal Court to be right and, if permitted to express an opinion we think it is, what about the state of the law? What about the mental attitude of the litigant when told that he would win in the Federal Court and lose in the State Court, or vice versa. What about a dual form of government admitting of such an anomalous condition? To inspire thought along that particular line is the object of this editorial. It is an effort through a concrete example to direct attention to the practical need of the Annual Conference of Appellate Judges, officially known as the "Judicial Section" of the American Bar Association. Ought not this great organization to meet oftener and continue longer in session? Ought not their discussions to embrace the important subject of uniformity of decision as well as uniformity of statute? We shall not be guilty of the temerity of suggesting the manner in which this shall be done.

There will be made the argument that the respective State Courts are best situated to know the law most suitable to their own jurisdictions for which reason the Federal Courts should feel constrained to follow them in questions of common law and general jurisprudence as well as where expressly required by statute. But, this is argument based upon expediency or courtesy and may be put to one side. Uniformity of decision is based upon the essential element of the contentment of the people, founded upon their faith in law as a fixed science and in Courts as its sacred exponents. The lay mind cannot comprehend government enforcing conflicting laws in the same jurisdiction. The trained lawyer understands *how* it happens, but not why it happens. But it is the laymen who must be satisfied.

Men who go about amongst the people and obtain first impressions of their thoughts will testify that there never was a time when the faith of the people needed reviving so badly, not excepting the days immediately following the adoption of the American Constitution as it is pictured by the letters of Adams, Jefferson, Madison, Hamilton, James Wilson and Iredell! And it is the faithful that need encouragement. The encouragement required is a certainty of law to all men, by all State and Federal Courts by statute. It will eventually be made between State and State by patriotism and self-preservation. In such a case somebody will have to surrender personal views in the interest of the general welfare. The high intelligence of the personnel gives assurance to the life of the most meritorious. That is the office of the Annual Conference of Judges.

THOMAS W. SHELTON.

THE USE OF PRECEDENT AND THE NEED FOR CODIFICATION.

The great mass of case law that is accumulating is causing the lawyers of England and America to revise their estimates of the value of many so-called precedents. Continental lawyers are not troubled by a mass of precedents or by conflicting authorities. They have their rules and principles and each case is decided by these rules without reference to the decision in some other case. This practice, which it was the custom of English and American lawyers to condemn as being unjust, is now to some extent being looked upon with favor, both in England and America.

Probably the most significant evidence of this change of opinion is a statement by Lord Dunedin in delivering the opinion in the case of McCarton v. Belfast Harbour Commissioners (1911), 2 Irish Rep. 143, a case involving the question of the liability of a master, who lends his servant to another, for the negligence of such servant while in the employ of the hirer. On this point the authorities in England are not only voluminous but very confusing. In refusing to follow the lead of diligent counsel in making fine distinctions based on the facts of all the previous cases which appeared to be in point, he said:

"Decisions are valuable for the purpose of ascertaining a rule of law. No doubt they are also useful in enabling us to see how eminent judges regard facts and deal with them, and great numbers of recorded precedents are useful in no other way. But it is an endless and unprofitable task to compare the details of one case with the details of another in order to establish that the conclusion from the evidence in the one case must be adopted in the other case. Given the rule of law, the facts in each case must be independently considered in order to see whether they bring it within the rule or not."

There seems to be only one way out of the labyrinthine maze of confusing and conflicting precedents, and that is the codification of important branches of the law and starting all over again with the exact and carefully stated provisions of a code to guide the lawyer in advising clients and to furnish him his all-sufficient ground for offense or defense in the trial of causes, so far as the law is concerned.

We already have had experience with commercial codes and this experience has been in the main satisfactory. The Negotiable Instruments law has been the efficient means of wiping out a great mass of conflicting precedents, and if it were not for the ignorant obstinancy of some appellate judges in resurrecting the old cases to change and twist out of shape the clear meaning of the code provisions the situation would be ideal. The same thing is true with the Uniform Sales Act. Here was a mountain of precedent and the facts in all the cases were so closely analyzed in the text books that to one who could grasp the distinctions sought to be drawn from them, the so-called task of dividing a hair between its north and northwest side was child's play. The Uniform Sales Act has put into the discard all this learning of the law of sales, and the lawyer finds in the Act clearly stated principles that govern his case, which the court is able to decide without the necessity of analyzing the mental difficulties of all the judges, good, bad and indifferent, who have wrestled with the same problem.

Lawyers have not given as much credit as they should to the self-sacrificing labors of the lawyers who constitute the Conference of Commissioners on Uniform State Laws. This great body, for nearly half a century, has labored slowly, carefully and successfully in codifying those branches of the law in respect of which uniformity and certainty were most desirable.

Precedents have important uses and the propagandists of the common law will never consent to give up the principle, or fiction if you wish, that the law is a living

science, capable of growth without the aid of statute, and that justice, like truth, is a natural heritage of man, the domain of which is always open to exploration and discovery. But there can be no objection even from the most devoted admirers of the common law to have these explorations and discoveries charted, classified and indexed for the convenience of future travelers. It ought not to be necessary for the lawyer of today to undertake all the labors of previous explorers in the domain of the law in order to appropriate the definite results of their researches.

NOTES OF IMPORTANT DECISIONS.

DOES LOSS OF HAND RESULT FROM LOSS OF FINGERS UNDER WORKMEN'S COMPENSATION LAW?—The Workmen's Compensation Law provides damages in different amounts for different degrees of injury. It becomes a question not always easy to answer exactly to what category a particular injury belongs. This question was before the Supreme Court of Oklahoma in the recent case of Bristow Cotton Oil Co. v. State Industrial Commission, 188 Pac. 658. In this case the question was whether the loss of four fingers would under the circumstances of that case be regarded as the loss of a hand and compensation allowed on that basis. In amputating the fingers a part of the palm had been removed, which the Court held amounted to the loss of the hand even though the claimant admitted that he had "some use" of the hand and could "move his thumb a little bit."

The decision of the Court is in line with the authorities. In Rockwell v. Lewis, 154 N. Y. Supp. 893, where the servant lost three fingers and the fourth finger was rendered stiff and practically useless, the award for permanent loss of the use of the hand was sustained. In Feinman v. Albert Mfg. Co., 155 N. Y. Supp. 909, where the accident necessitated amputation of the finger at the first phalange, which resulted in stiffness, so that the remainder of the finger became practically useless, it was held that the finger must be deemed to have been lost, although not actually amputated, and an award was sustained for the entire amount that could have been recovered for the loss of such finger. In the case of Massachusetts Employes' Ins. Ass'n, 219 Mass. 136, 106 N. E. 559, it was held that a hand "is incapable of use when the injuries are such that the hand cannot be used in the ordinary manner, and is capable of use only as a hook; it not being necessary that the incapacity be tantamount to an actual severance."

SUITS AGAINST EXECUTORS FOR THEIR NEGLIGENCE IN HANDLING DECEDENT'S PROPERTY.—As a usual rule claims founded on the handling of the decedent's estate by the executor are not claims and should not be presented to the executor nor allowed by the Probate Court unless the statutes of the particular state specifically provides. Such claims are against the executor himself for which he will in proper cases be allowed to take credit on final settlement. This rule applies especially to tort claims for which, except under special circumstances, the executor alone is liable and will not necessarily be allowed credit for the damages he has suffered because of his own negligence. At any rate the executor cannot object to a suit and judgment in personam based on his negligence in transacting the business of the estate and the fact that he is described as holding the property with respect to which he is charged with negligence as executor does not make the petition demurrable.

This view is emphasized by the decision of the Supreme Court of Washington in the recent case of Fisher v. McNeely, 180 Pac. Rep. 478. In this case plaintiffs recovered a judgment for damages against defendant for her negligence in operating a logging railroad belonging to the estate of her deceased husband, of which she was the executrix. The defendant alleged as a ground for a new trial the overruling of her demurrer to the petition on the ground that the claim should have been presented in the usual way and allowed against the estate. The Supreme Court denied the contention on the theory that this was not a claim against the estate but against the executrix personally even though defendant was alleged in the petition to be operating the road as executrix, this latter allegation being mere *descriptio personae*.

The case of Belvins' Executors v. French, 84 Va. 81, 3 S. E. Rep. 891, is a case almost "on all fours" with the facts in the principal case. In sustaining a recovery against the administrator the Supreme Court of Appeals of Virginia said:

"The first assignment of error is that the Circuit Court erred in overruling the demurrer to the declaration. The ground upon which this contention is based is that the action is in form ex delicto, and is against the defendants as executors, and is therefore not maintainable. The general principle, undoubtedly, is that, unless authorized by statute, a personal representative cannot be sued as such for his own tort. But this principle does not apply to the case in hand; for here the action is not against the defendants in their representative capacity, but is against them personally. It is true they are described as executors, but this is merely *descriptio personae*, and may be stricken out as surplusage, inasmuch as no cause of action is set forth in the declaration for which, under any circumstances, they can be held responsible as executors. Besides, there is no well-founded objection to the declaration as it is, for by describing the defendants as executors it merely sets forth their relation to and consequent duties respecting the property mentioned therein, and then it further alleges that for their failure to perform those duties, namely, in negligently permitting the area light to be and continue in an unsafe condition, they are answerable personally to the plaintiff in this action; at least such is the substance and effect of the allegations in this declaration."

In Bannigan v. Woodbury, 158 Mich. 206, 122 N. W. 531, 133 Am. St. Rep. 371, it was said that "the allegation that one is administrator and that as such he is in possession of the property does not necessarily negative his personal liability." See, also, Shepard v. Craemer, 160 Mass. 496, 36 N. E. 475; Rose v. Cash, 58 Ind. 278; McCue v. Finck, 2 Misc. Rep. 506, 46 N. Y. Supp. 242; Brown v. Floyd, 163 Ala. 163. 50 So. Rep. 995. The underlying principle in this class of cases is that an agent in control of property is responsible for his own tortious acts. Ellis v. McNaughton, 76 Mich. 237, 42 N. W. Rep. 1113, 15 Am. St. Rep. 308.

LIABILITY OF DIRECTORS OF CORPORATION FOR VOTING DIVIDENDS IN EXCESS OF PROFITS.—To show how liable one is to err in the law by following first impressions of the justice of a case, Justice Pitney, then Vice Chancellor of New Jersey, declared at one time that it "would be unjust for the stockholders directly to recover from the directors the very moneys which they had already received." Siegman v. Maloney, 63 N. J. Eq. 422. In a later case, when Mr. Justice Pitney became a member of the Court of Errors and Appeals, he reached just the opposite conclusion. Siegman v. Electric Vehicle Co., 72 N. J. Eq. 408, 65 Atl. 912.

The same question recently came before the Court of Appeals of California, which, in a very admirable opinion, reached the conclusion that stockholders who receive the benefits of an illegal dividend are not estopped from suing the directors on behalf of the corporation to compel them to pay back to the corporation the amount of the illegal dividend which they had voted. Southern California Home Builders v. Young, 188 Pac. 586. In this case five directors voted three dividends, amounting to $30,000 which the trial Court found were not paid out of surplus profits. The directors offered in evidence the balance sheet prepared by their bookkeeper showing profits of more than $30,000, but the Court found that this result was caused by carrying fixed assets at a valuation greatly in excess of their real worth. In reply to the contention that the directors were liable for illegal dividends only to creditors the Court said:

"Although one of the purposes of such a statute was to protect creditors, that was not its sole purpose. The statute affords protection in proper cases to the corporation, regardless of whether or not there are creditors. It would be nothing short of absurd, therefore, to hold that no suit could be maintained to enforce the liability, except one on behalf of stockholders. Kohl v. Lilienthal, 81 Cal. 387, 20 Pac. 401, 22 Pac. 689, 6 L. R. A. 520. The cases of Winchester v. Mabury, 122 Cal. 522, 55 Pac 393, and Moss v. Smith, 171 Cal. 777, 155 Pac. 90, when read in connection with the facts upon which they were based, lend no support to the contentions of the appellants."

The clearest exposition of the reason for the common law liability of directors for declaring illegal dividends, is found in the opinion of Chief Justice Gummere of the Court of Errors and Appeals of New Jersey in the case of Appleton v. American Malting Co., 65 N. J. Eq. 375, 54 Atl. Rep. 454, where that learned jurist, in answer to the argument that it would be inequitable to permit stockholders to recover from directors money which they themselves had received as dividends, said:

"The argument assumes there will be no transfer of the stock of the company during the period of the liability of the directors. The assumption is unwarranted. The very declaration of the dividend, evidencing, as it does, the apparent prosperity of the company, creates a desire on the part of outsiders to become holders of the stock. It at the same time decreases the actual, while increasing the apparent, value of the stock. The result is to afford unscrupulous directors, and stockholders who are cognizant of the illegal action of the board, an opportunity to unload their holdings upon innocent purchasers at fraudulently inflated prices.

* * * Nor is it inequitable that stockholders who have innocently participated in the distribution of the illegal dividends should have their stock restored to its normal value by contribution from the directors who have impaired the capital without being first required to pay back the dividend so paid to them. The ordinary purchaser of corporate stock holds it as an investment. He rightly considers and treats the dividends paid upon it as income. In many instances the income is required to meet the expenses of livng, and is entirely expended for that purpose. To say that a person who has been unwittingly induced to exhaust his principal by the mistaken or fraudulent representation of those to whom he has intrusted it, that what has been paid to him as income suffers no injury, is absurd. To refuse him redress except upon the condition that he return the moneys which he has expended in the belief that his capital was intact, notwithstanding that by such expenditure he is rendered penniless, is to put a premium upon fraud in corporate management."

LEGISLATIVE DEFINITION OF CONSTITUTIONAL TERMS—"INTOXICATING LIQUORS."

It is very common practice of a legislature to adopt a statute and define the terms used in it. There is no question over the power of a legislature to do this; but the Courts have universally held that after a statutory term or expression has been judicially defined or its meaning determined the legislature thereafter has no power to adopt a statute declaring the meaning or defining the terms used in such former statute.

This is merely preliminary, in order to draw a distinction between the kind of legislation and legislation attempting to define or extend phrases or terms used in the constitution.

Can the legislature do this? At first blush it would seem such a question is preposterous; and yet legislatures (and even Congress recently in the Federal Prohibition Act) have at least occasionally attempted to do this.

Somewhat apropos of this question the Supreme Court of Pennsylvania has said:

"The legislature must exercise its power within the lines laid down by the constitution. What it shall do within these lines, is a question that addresses itself to the wisdom and discretion of its members. Whether it shall disregard them, and do that which the constitution forbids, is a question which, when such legislation is attempted, belong to the Courts. When they decline, if they ever do, to compel obedience to the constitution, all check upon legislative powers will be gone."[1]

Speaking of the three departments of government, Chief Justice Marshall said: "The difference between the departments undoubtedly is, that the legislature makes, the executive executes, and the judiciary construes the law."[2]

In an Illinois case it is said that "The legislative power extends only to the making of laws, and in its exercise it is limited and restrained by the paramount authority of the federal and state constitutions."[3]

In an early Virginia case it was said:

"The interpretation of the law is the proper and particular province of the Courts. A constitution is in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body."[4]

Speaking of the power of the legislature, Gibson, C. J., of the Supreme Court of Pennsylvania, said: "It is limited to the making of laws; not to the exposition or explanation of them."[5]

In Maine it has been said:

"It is, however, a fundamental duty of the Court and within its exclusive province to construe both the statutes and the constitution and to ascertain not only from the words themselves, but from the con-

(1) In Re Ruan Street. 132 Pa. St. 257; 19 Atl. 219; 7 L. R. A. 183. In matter of Lafayette Co., 2 Pinney 523.

(2) Wayman v. Southard, 10 Wheat. 46. See also Greenough v. Greenough, 11 Pa. St. 494, and Westinghausen v. People, 44 Mich. 265; 6 N. W. 641.

(3) Newland v. Marsh, 19 Ill. 383.

(4) Tucker, J., in Kamper v. Hawkins, 1 Va. Cas. (3 Va.) 20, 82.

(5) De Chastellux v. Fairchild, 15 Pa. St. 18; 53 Am. Dec. 570.

text, from the purpose to be sought, and in some cases from the result attending upon one construction or the other, what the real intention of the law-making power was and how the expressed intention should be interpreted."[6]

"The construction and force of this constitutional provision presents a legal question to be decided by the Courts."[7]

"The course of legislation on this subject by the legislature, while it is entitled to respect, cannot be permitted to control the decisions of the judicial department in its construction of the constitutional provision; for, as was said by Chief Justice Marshall in Cohens v. Virginia,[8] 'the power to make, or unmake the fundamental instrument of government, resides only in the whole body of the people, and not in any subdivision of them.' "[9]

"Where a constitution defines the qualification of an office, it is not within the power of the legislature to change or superadd to it, unless the power be expressly, or by necessary implication, given to it."[10]

Nor can the legislature add to the constitutional qualifications of voters.[11]

Neither can it diminish them.[12]

Neither can it add to or diminish the qualifications of an officer as fixed by the constitution,[13] nor shorten[14] the limit fixed by the constitution.[15]

"It is not within the province of the legislature to construe the constitution in any sense that would make it binding upon the Courts."[16]

Let us now turn to a few concrete examples.

In Georgia, where the constitution used the phrase "head of a family," the question arose whether the legislature could so extend its provisions as to cover a bachelor not maintaining a household, and it was held that it could not, the Court saying:

"The constitution in using the terms 'each head of a family,' left the question of what constituted the head of a family open for interpretation; and the Courts alone had the right to interpret the question, or to say who was, within the meaning of the constitution, the head of a family. While we have great respect for the law-making power, we cannot defer to its construction of the constitution or laws. That power is lodged in the judiciary. In the dividing line of power between these co-ordinate branches we find here the boundary —construction belongs to Courts, legislation to the legislature. We cannot add a line to the law, nor can the legislature enlarge or diminish a law by construction. There are cases where the legislative intent guides the Court in the construction or exposition of what the law is, the Courts look to the intent of the legislature as an element in their construction. But when the constitution is the subject matter of construction, the Courts are the authority. And we have no hesitation in saying the legislature cannot, by the declaration of an act, make a single person living to him or herself the head of a family."[17]

(6) Moulton v. Scully, 111 Me. 428; 89 Atl. 944.

(7) Citing State v. Rogers, 56 N. J. L., 480; 28 Atl. 726, 29 Atl. 173.

(8) 6 Wheat. 264.

(9) Wauser v. Hoos, 60 N. J. L. 482; 38 Atl. 449; 64 Am. St. 600.

(10) C. J. LeGrand in Thomas v. Owens, 4 Md. 189, 223.

(11) Rison v. Farr, 24 Ark. 161; Quinn v. State, 35 Ind. 485; Morris v. Powell, 125 Ind. 280; 25 N. E. 221; 9 L. R. A. 326; State v. Williams, 5 Wis. 308; Monroe v. Collins, 17 Ohio St. 665; State v. Staten, 6 Cold. 233; Randolph v. Good, 3 W. Va. 551; McCafferty v. Guyer, 59 Pa. St. 109.

(12) Allison v. Blake, 57 N. J. L. 6; 29 Atl. 417; 25 L. R. A. 480.

(13) Feibleman v. State, 98 Ind. 516.

(14) Howard v. State, 10 Ind, 99; State v. Askew, 48 Ark. 82; 2 S. W. 349.

(15) People v. Bull, 46 N. Y. 57; State v. Brewiter, 44 Ohio St. 589; 6 N. E. 653; Kahn v. Sutro, 114 Cal. 316; 46 Pac. 87; 33 L. R. A. 620.

(16) State v. Speers, 53 S. W. 247 (Tenn. Chancery.)

(17) Calhoun v. McLenden, 42 Ga. 405.

The constitution of Georgia declared that "Each head of a family * * * shall be entitled to homestead" exempt from levy and sale; and the legislature undertook to extend its provisions by declaring "That any single person male or female, or married person, who, at the time of the adoption of the present State Constitution, or before, lived habitually as housekeeper to himself or herself, on his or her own land, is hereby declared to be the head of a family." The statute was declared void; on the ground that it was an endeavor to extend the meaning of the term "head of a family." The Supreme Court had, before the enactment of this statute, decided what constituted a head of a family (40 Ga. 173). It is true that the statute was void, because it was an effort to give an interpretation to the term "head of a

A constitutional provision providing that benevolent associations shall be exempt from the payment of an incorporation fee cannot be extended by the legislature so as to exempt a building association organized "whereby the shareholders, out of their savings, may be enabled to secure homes, or loan their savings to others at higher rates of interest, to be fixed by the directors."[18]

In Texas an act was adopted by the legislature providing that in case of a sale and shipment of intoxicating liquor the place of sale should be deemed to be the place of receipt and not at the place of delivery to the shipper. The constitution prohibited the sale of liquors within a geographical division of the state where local option had been adopted. Thus the statute sought to make a sale invalid by changing the well-known rule of law that a sale is completed at the point of shipment, and not at the point of destination. The Supreme Court of Criminal Appeals held the statute unconstitutional, saying: "Sale, used in article 16, Section 20, had as thoroughly known and definite meaning as did the expression 'intoxicating liquors,' used in the same action. The legislature could with as much propriety pass an act defining 'intoxicating liquors' entirely destructive of its meaning as used in the constitution, as it could the definition and meaning of the term 'sale' as therein used. The same reasoning which justified one would authorize the other, and one proposition is as subversive of the constitution as would be the other. Those who would sustain the act of the legislature defining C. O. D. sales as occurring at the point of consignment despite the real contract, would scarcely agree that that body could eliminate 'intoxicating liquors' by giving that term a definition out of accord with its ordinary and well-understood meaning as therein employed, or add 'liquors' thereto which are not intoxicating. Where words, terms or language are plain and definite, there is no room for construction, for such language is self-construing, and to be taken in its ordinary meaning and acceptance at the time of the adoption of the constitution. If this were not true, the legislature could carve or legislate away the plainest provisions of that instrument, or these provisions could be construed to mean anything to suit the passing fancy of the hour, or as clamor might demand."[19]

A statute of Nevada created and authorized the Nevada Benevolent Association to give not exceeding three entertainments or gift concerts, and to sell tickets of admission to it entitling the holder to participate in a distribution of awards "by raffle or other schemes of like character," and then declared that "nothing in this act contained shall be construed as authorizing a lottery in this state, or as allowing the sale of lottery tickets contrary to the provisions of the constitution." The Supreme Court held that the statute in fact provided for a lottery in direct violation of a provision in the state constitution, that it was void; and that the provision of the statute just quoted could not save it from the charge of unconstitutionality, saying:

"The state government is divided by the organic law into executive, legislative and judicial departments, and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others except in cases expressly directed or permitted. The construction to be placed upon this act must be determined by the Court alone. The attempted exercise of this power by the legislature was an assumption of the functions of the judiciary, and must be disregarded."[20]

The constitution of Texas provided that "no person for the same offense shall be twice put in jeopardy of life or liberty"; and in 1856 the legislature provided that

family" after the Supreme Court had interpreted that term, which all the courts declare cannot be done; but the language quoted is amply broad enough to cover an instance where no interpretation of even a statute had previous to its enactment been made.

(18) State v. McGrath, 95 Mo. 193; 8 S. W. 425.

(19) Keller v. State (Tex. Crim. Apps.); 87 S. W. 669; 1 L. R. A. (N. S.) 489. See the comments of Chief Justice Bronson on this subject in Oakley v. Askinwell, 3 N. Y. 547, 568.

(20) Exparte Blanchard, 9 Nev. 101.

"no person for the same offense can be twice put in jeopardy of life or liberty"; and added, "This is intended to mean that no person can be subjected to a second prosecution for the same offense after having once been prosecuted in a Court of competent jurisdiction *and duly convicted.*" This was followed by a clause explaining the words italicized: "The foregoing article will exempt no person from a second trial who has been convicted upon an illegal indictment or information and the judgment thereon arrested, nor where a new trial has been granted to the defendant, *nor where a jury has been discharged without rendering a verdict, nor for any cause other than that of a legal conviction.*" This statute was almost literally re-enacted in 1879.

The Court of Appeals of that state considered that part of the statute above italicized void, saying: "The construction of the term *jeopardy* in our constitution being the proper one, as settled by the decisions of the Courts before the constitution was adopted, it is to be presumed that the word was used in that sense when our constitution makers put it into the constitution. If this be so, then it must follow that the legislature had no authority to give it another and different meaning from that which it must have intended it should have. And it must further follow that the attempted act on the part of the legislature was without authority, and is not binding upon the Courts."[21]

(21) Powell v. State, 17 Tex. Cr. App. 345. "But the Legislature has no authority to interpret or declare a matter of constitutional construction of a constitutional provision which has become fixed and settled by judicial determination." Ibid.

"Evidently, to our minds, medicated bitters producing intoxication are intoxicating liquors, within the meaning of the constitution. If we held otherwise, these local option districts would be flooded with intoxicating liquors containing some stuff called 'medicines.'" James v. State, 21 Tex. App. 353; 17 S. W. 422.

"Intoxicating liquors" has been defined in the following cases: People v. Hawley, 3 Mich. 330; People v. Sweetser, 1 Dak. 308; 46 N. W. 452; State v. Oliver, 26 W. Va. 422; 53 Am. Rep. 79; Sebastian v. State, 44 Tex. Cr. Rep. 508; 72 S. W. 849; Pike v. State, 40 Tex. Cr. Rep. 613; 51 S. W. 395; Commonwealth v. Timothy, 8 Gray 480; State v. Coulter, 40 Kan. 87; 19 Pac. 368; James v. State, 49 Tex. Cr. Rep. 334; 91 S. W. 227; Mason v. State, 1 Ga. App. 534; 58 S. E. 139; Walker v. State (Tex.) 98 S. W. 265; State v. Burk, 234 Mo. 574; 137 S. W. 969; Heintz v. La Page, 100 Me. 542; 62 Atl. 605; Exparte Townsend (Tex.) 144 S. W. 628; State v. Burk, 151 Mo. App. 188; 131 S. W. 883; Sandolski v. State (Tex.) 143 S. W. 151; Murray v. State, 56 Tex. Cr. App. 438; 120 S. W. 437; State v. Piche, 98 Me. 348; 56 Atl. 1052; Murray v. State, 46 Tex. Cr. Rep. 128; 79 S. W. 568; Mason v. State, 56 Tex. Cr. Rep. 261; 119 S. W. 852; Arburthnot v. State, 56 Tex. Cr. Rep. 517; 120 S. W. 478.

"The language of said [constitutional] prohibition ordinance, reasonably construed, means liquors which will intoxicate, and which are commonly used as beverages for such purpose, and also any mixture thereof, compounds, or substitutes for such liquors that possess intoxicating qualities. The use of intoxicating liquors as a beverage was the evil to be prevented, and by the adoption of prohibition as a part of the organic law it was intended to put a stop to such use." Markinson v. State, 2 Okl. 323; 101 Pac. 353.

State v. Witt, 39 Ark. 216; Snyder v. State, 81 Ga. 753; 7 S. E. 631; 17 Am. St. 350; Decker v. State, 39 Tex. Cr. Rep. 20; 44 S. W. 845; Taylor v. State (Tex.), 49 S. W. 589; Malone v. State (Tex.), 51 S. W. 381; Pike v. State, 40 Tex. Cr. Rep. 613; 51 S. W. 395; City of Topeka v. Zufall, 40 Kan. 47; 19 Pac. 361; 47 L. R. A. 387; Commonwealth v. Morgan, 149 Mass. 314; 21 N. E. 369; State v. May, 52 Kan. 53; 34 Pac. 407; State v. Intoxicating Liquors, 76 Iowa 243; 41 N. W. 6; 2 L. R. A. 408; State v. Barron, 37 Vt. 57; Johnson v. State, 23 Ohio St. 556; State v. Biddle, 54 N. H. 379 (question for jury); In Re Intoxicating Liquor Cases, 25 Kan. 751; 37 Am. Rep. 284; Mullen v. State, 96 Ind. 304; State v. Lewis, 86 Minn. 174; 90 N. W. 318; Holland v. Commonwealth, 7 Ky. Law Rep. 223 (brandy peaches); Ryall v. State, 78 Ala. 410 (brandy peaches); Rabe v. State, 39 Ark. 204 (brandy peaches); Commonwealth v. Chappel, 116 Mass. 7; Hewitt v. People, 186 Ill. 336; 57 N. E. 1057; Johnson v. State, 23 Ohio St. 556; State v. Page, 66 Me. 418 (question for jury); Anderson v. Commonwealth, 9 Bush. 569; State v. Muncey, 28 W. Va. 494; Holcomb v. People, 49 Ill. App. 73; Peopl v. Schew, 29 Hun. 122; People v. Zeiger (N. Y.), 6 Parker Cr. Rep. 359; Bertrand v. State, 73 Miss. 51; 18 So. 545; U. S. V. Stubblefield, 40 Fed. 459; Wadsworth v. Dunnam, 98 Ala. 610; 13 So. 597; State v. Lillard, 78 Mo. 136; Russell v. Sloan, 33 Vt. 656; Common-

The recent amendment to our federal constitution provides that

"After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and

all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited."[22]

Having this amendment in view Congress enacted and passed over the President's veto a long and drastic statute on the subject of "intoxicating liquors" wherein it undertook to define that phrase, as follows:

"The word 'liquors' or the phrase 'intoxicating liquors' shall be construed to include alcohol, brandy, whisky, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt, or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, and by whatever name called, containing one-half of one per cent or more of alcohol by volume which are fit for use for beverage purposes."[23]

In both the House of Representatives, where this statute had its origin, and in the Senate, are many very excellent lawyers and not a few well versed in constitutional law; and yet, in view of the almost universal construction of our constitution by the Courts, as reflected in the cases above cited, the conclusion is almost forced upon the writer that they overlooked or did not fully appreciate what they were doing when they adopted that part of the statute defining "Intoxicating Liquors."

The definition of that term is certainly one for the Courts. If the Congress may say that liquors containing one-half of one per cent of alcohol shall be considered an "intoxicating liquor," then at some session of that body in the future when the then members of that body entertain extreme ideas on prohibition it may enact a statute declaring that one-tenth (or even less) of one per cent of alcohol in liquor shall be deemed an "intoxicating liquor." On the other hand, if a majority of Congress entertained "liberal" ideas on the subject of intoxicating liquors it might enact a statute that no liquor should be deemed "intoxicating" which did not contain over four, or six, or ten, or even more (where is the limit?) per cent of alcohol.

If it could thus raise the per cent of alcohol, then in the estimation of the prohibition element, at least, of our people the United States would no longer be "dry" but "wet"; and such would be the opinion of ninety-nine hundredths of its people.

Thus the amendment would be practically nullified. Such an interpretation of the power of Congress leaves open the door to a practical return to the sale of liquor, in fact intoxicating.

There is no doubt about the desirability of a fixed and inelastic determination of what is an "intoxicating liquor"; but that determination should have been made by the constitutional amendment itself. There will be, as there now is, different opinions concerning what is and what is not an "intoxicating liquor." A man with high prohibition ideas or sentiments will consider a liquor with an extremely small percentage of alcohol in it to be an "intoxicating liquor"; while a man with "liberal" ideas or notions will just as honestly consider a liquor with a very much higher percentage not intoxicating. In the trial of cases witnesses will honestly clash over the question whether a particular liquor is or is not intoxicating. The Courts cannot set up for themselves a standard of percentages. In the last analysis an alcoholic liquor that has any effect whatever, though unknown to him, upon an individual is intoxicating; but was it the intention in the adoption of the constitutional amendment to cover or prohibit the sale of such a liquor? Coffee and tea are stimulants. Yet is an alcoholic liquor that is no more a stimulant than these two liquors to be held to be an "intoxicating liquor?"

If the question is to be left to a jury, then a jury in one state, owing to the prohibition sentiment, will hold a particular

wealth v. Ramsdell, 130 Mass. 68; Howell v. State, 71 Ga. 224; 51 Am. Rep. 259; King v. State, 58 Miss. 737; 38 Am. Rep. 344; Carl v. State, 87 Ala. 17; 6 So. 118; 4 L. R. A. 380; State v. Parker, 80 N. C. 439.

(22) U. S. Comp. Stat., 1919 Supp., p. 2678.

(23) U. S. Stat. 1919, p. 307, Sec. 1. Passed Oct. 28, 1919.

liquor to be an "intoxicating liquor"; while in another state where prohibition sentiment does not exist, or runs low, another jury may find or hold that the same liquor is not intoxicating.

Probably no greater difficulty will be experienced determining what is an intoxicating liquor under this constitutional amendment than has been experienced in many states where that term has been used in their statutes or the constitutions; but it is quite clear, if defined at all, that the Courts must define it, and also that Congress cannot set up a standard by which to determine what is an "intoxicating liquor."

W. W. THORNTON.

Indianapolis, Ind.

BILLS AND NOTES—INDORSEMENT.

BANK OF CALIFORNIA v. STARRETT.

Supreme Court of Washington, March 17, 1920.

188 Pac. 410.

Despite Negotiable Instruments Act (Rem. Code 1915, § 3408), providing that, where signature is so placed on the instrument that it is not clear in what capacity the person intended to sign, he is deemed an indorser, signature by defendant of a company's note on the usual blank form by writing his name on the left side of the bottom of the body of the note, instead of on the right, gave rise to no presumption defendant was indorser, instead of maker.

FULLERTON, J. This is an action upon a promissory note, of which the following is a copy:

"$4,000. Seattle, Washington, Mar. 15, 1917.

"On demand, after date, we jointly and severally as principals promise to pay to the order of the Bank of California, National Association, four thousand dollars, for value received, with interest from date at the rate of 6 per cent per annum payable monthly until paid. Principal and interest payable in U. S. gold coin, at the Bank of California, National Association, in this city.

"In case default is made in the payment of this note, and the same is placed in the hands of an attorney for collection, we jointly and severally agree to pay five per cent of the amount then due as attorney's fees, if paid without suit; but if suit be commenced to collect the note, or any part thereof, we jointly and severally agree to pay ten per cent upon the amount due at the time suit is brought, and in case such suit is prosecuted to judgment, said attorney's fees equal to ten per cent of the amount then due, shall be included in said judgment, and such judgment shall bear interest at the rate of ten per cent per annum.

"All parties to this note, including guarantors, sureties and indorsers, hereby severally waive presentment, protest, notice of non-payment, and any release or discharge arising from any extension of time of payment or other cause.

"[Seal] Teller Packing Company.
"Henry Teller. By Henry Teller, Pres.
"H. W. Starrett. W. T. Hall."

Of the parties to the note, Hall and Starrett alone were served with process. Hall defaulted. Starrett answered, putting in issue by denials the traversable allegations of the complaint, and pleading affirmatively the following:

"Further answering said complaint, and as a first affirmative defense thereto, this defendant alleges:

"That at the time of the execution of the said note, described in paragraph 3 of said complaint, this defendant signed the same as an indorser, without consideration, upon the understanding that the plaintiff would collect the amount thereof, with interest, from the defendant Teller Packing Company, a corporation, as and when said corporation, which was then engaged in the salmon packing business, should receive money from the sale of its pack.

"VI. That the said note is a demand note, and at diverse and different times since the making thereof, the said Teller Packing Company has had on general deposit in an open account with the said plaintiff, from the sale of its pack, large sums in excess of the amount then or at any time due upon the said note, and that this defendant on several occasions notified the plaintiff that the said deposit was on hand, and requested it to make demand upon the said Teller Packing Company, which was primarily liable thereupon for payment of the said note, and to apply so much of said deposit as was necessary to the payment thereof.

"VII. That this defendant further informed the said plaintiff that said Teller Packing Company was in a precarious financial condition, and that defendant might be injured, but that, notwithstanding the defendant's request, the said plaintiff refused and neglected to make application of said deposit towards the payment of said note or any part thereof, or to do anything proper to protect this defendant in the premises.

"IX. That since the said request was made by this defendant, the said Teller Packing Company has been adjudged bankrupt."

The first question presented by the record is: In what capacity did the appellant sign

the instrument; that is to say, is he a maker or an indorser? It is the appellant's contention that he signed as an indorser. This is founded upon section 17, subd. 6, of the Negotiable Instruments Act (Rem. Code, § 3408), which provides that, where a signature is so placed upon an instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser. The only thing unusual in the placing of the signature upon this instrument is that it was placed on the left side of the bottom of the body of the instrument, instead of upon the right, the more usual place for the signatures of makers. But there can be no hard and fast rules in such cases. The exigency of modern business conditions requires that houses using commercial paper keep on hand blank forms of such paper as they most commonly use. These forms must be more or less general, if they are to serve their purposes, and the result of this practice is that such paper is often found containing matter which is surplusage when applied to the particular transaction. Such forms must also be limited as to size, and only a limited number of spaces can be provided for signatures. When the instrument is a note, and there are more makers than there are spaces for signatures, it is not an uncommon practice for some of them to sign in the blank space to the left of the place prepared for signatures. The original note which is in evidence bears evidence that such was the case here. The names of the corporation maker, together with the name and title of the authenticating officer, with that of another maker, took up all of the available space provided for the signatures, and the appellant, with the other person charged as maker, if they signed upon the note at all, had to sign elsewhere than in the more usual place.

The appellant argues that the place upon which he placed his name on the note is the place usually reserved for witnesses to the signatures of the persons bound by the instrument, and that for this reason it is not clear as to the capacity in which he signed. In a case where the law required the instrument to be authenticated by witnesses, undoubtedly this argument would have force whether the capacity in which they actually signed was indicated or not; but we think it has little weight where the instrument is a promissory note. The law of this state has never required the signatures of a promissory note to be authenticated by witnesses, and we are not aware that such was ever the rule of the law merchant. There can therefore be no presumption that persons so placing their names signed as witnesses, and hence nothing upon which the rule of the statute can seize to charge them as indorsers.

We have been cited to no case, and our own researches have discovered none, where the precise question has been presented. In the case of Germania Bank v. Mariner, 129 Wis. 544, 109 N. W. 574, it was discussed somewhat; but the real question there presented and determined was whether the defendant was bound upon the note at all, not whether he should be bound as a maker or as an indorser. Our own case of Handsaker v. Pedersen, 71 Wash. 218, 128 Pac. 230, also touches the question. In that case certain parties to the note claimed they were not makers, but only indorsers, and the fact that they signed the note in the lower left-hand corner was relied upon as a circumstance indicating their purpose. We there said that this circumstance, "if worthy of consideration at all," was overcome by certain parol evidence introduced at the trial. This case, it is true, is not conclusive of the question; but it is clear that insofar as it has bearing it sustains the conclusion we here reach, namely, that a person so placing his signature upon a note signs as maker rather than as an indorser.

Since the appellant signed the note as maker and not as an indorser, can he show in defense of an action against him upon the note the matter alleged in his affirmative answer? By the terms of the Negotiable Instruments Act an accommodation party to a note is primarily liable thereon. His engagement is to pay the note according to its tenor, and is so holden to the payee, even if, at the time of taking it, the payee knew he was but an accommodation party. Rem. Code, §§ 3420, 3551, 3582. While the rule is not uniform, even in those states which have adopted the Negotiable Instruments Act, it is generally held that a contemporaneous parol agreement limiting the liability of such a maker, or fixing a collateral source of payment, is not available as a defense. Such was our holding in Van Tassel v. McGrail, 93 Wash. 380, 160 Pac. 1053, where a number of our cases to the same effect will be found collected. See, also, Bradley Engineering Co. v. Heyburn, 56 Wash. 628, 106 Pac. 170, 134 Am. St. Rep. 1127. To permit the agreement pleaded to be shown would there-

fore be a violation of the parol evidence rule as we have heretofore announced it.

The judgment is affirmed.

HOLCOMB, C. J., and MOUNT, MACKINTOSH and BRIDGES, JJ., concur.

NOTE—*Signature on Unusual Place on Face of Note.*—The Negotiable Instrument Law provides that "where a signature is so placed on an instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser." The Germania Nat. Bank v. Marriner, 129 Wis. 544, 109 N. W. 574, cited by the instant case, says: "This provision by its very terms, applies only to a case of doubt arising out of location of the signature upon the instrument. Names are sometimes placed at the side, on the end or across the face of the instrument, and thus a doubt arises as to whether the signer intended to be bound as a maker, or an indorser, or perhaps as a guarantor, and to solve these doubts the section in question was evidently framed." Then the Court goes on to argue that in the case before it the signature was at the place where a maker's signature should be and the section does not apply.

But in Moore v. Cary, 138 Tenn. 332, 197 S. W. 1093, L. R. A. 1918D, 963, the face of the note showed a note payable to the order of Moore and signed at the foot by Moore and Cary. The Court held that Moore was to be deemed an indorser, because that was the only way he could be bound, and when the bank accepted the paper it took as an obligation by Carry as maker and Moore as indorser.

In Ex parte Yates (1857), 7 De G. & J. 191, Bruce, L. J., after saying that a party signed as indorser, continued: "In reply to this it had been urged that the signature was upon the face of the note and not upon the back of it. * * * The signature, although it was written upon the face of the note, was intended to have the force and effect of an indorsement, and it was as effectual as an indorsement as if it had been written upon the back."

In Cason v. Wallace (1868), 4 Bush (Ky.) 388, the Court spoke of an "inadvertent mislocation" of a name, rendering the signer an indorser.

In Gibson v. Powell (1841), 6 Hon. (Miss.) 60, payee's name was written under maker's signature, a patently unusual place. Payee was held as an indorser.

Franklin v. Twogood (1865), 18 Iowa 515, speaks of two paragraphs on Notes and Bills, p. 17, which say: "An indorsement is usually, as the word implies, written on the back of the instrument. It always should be written there, and although there is authority for saying that it may be written on the face, we are quite sure that a circumstance so unusual would be regarded with suspicion, and would require explanation."

But in Com. v. Butterick (1868), 100 Mass. 12, 97 Am. Dec. 65, the Court said "indorsed" means merely "written upon."

In Ryan v. First Nat. Bank (1894), 148 Ill. 349, 34 N. E. 1120, it was said it may "always be shown that a signature on the face of an instrument was placed there not as (of) a maker, but for the purpose of binding the party as indorser only."

And our view of the Negotiable Instruments Act in the section quoted from *supra* is to show that, if according to the tenor of the instrument any ambiguity arises, it may be explained and it has said, in effect, that such may arise from an apparent mislocation of a signature. If such may be explained so far as a bona fide holder for value is concerned, how much more is this true, when it becomes important between original parties, so far as the parol evidence is involved. C.

ITEMS OF PROFESSIONAL INTEREST.

PROGRAM OF THE MEETING OF THE BAR ASSOCIATION OF ARKANSAS.

Editor, Central Law Journal:

We are now in a position to announce the program for the Annual Meeting of the Arkansas Bar Association at Hot Springs, June 2-3, 1920. Hon. A. Mitchell Palmer, Attorney-General, expects to be present and has tentatively accepted our invitation to deliver an address. Hon. Roscoe Pound, Dean of Harvard Law School, will deliver an address on "A Ministry of Justice." We will have a timely discussion on "Road Improvement in Arkansas." George Vaughan, Little Rock, will read a paper upon this subject, under the sub-title, "Practical Workings," and W. B. Smith, Little Rock, on "Suggestions." This whole subject will be open to general discussion.

The following will read papers: W. F. Coleman, of Pine Bluff, "Local Assessments and Personal Property;" J. H. Crawford, of Arkadelphia, "Special Legislation in Arkansas," and Judge Scott Wood, of Hot Springs, subject not announced.

We will have a banquet or dinner on the first evening with a few short talks, followed by a reception and dance. This will enable members to leave on the 5:30 train on the afternoon of the second day of the meeting.

ROSCOE R. LYNN,
Secretary.

Little Rock, Ark.

PROGRAM OF THE MEETING OF THE GEORGIA BAR ASSOCIATION.

The thirty-seventh annual meeting of the Georgia Bar Association will be held at Hotel Tybee, Tybee Island, Ga., May 27, 28 and 29, 1920.

The President's address will be delivered by Mr. Luther Z. Rosser, of Atlanta. Prof. Roscoe Pound, Dean of the Harvard Law School, will deliver the annual address.

Other addresses will be delivered by Mr. Roland Ellis, of Macon; Mr. Eugene Black, of Atlanta, and Mr. John R. L. Smith, of Macon. Judge Arthur G. Powell, of Atlanta, will read a paper entitled, "Practice in Appellate Courts."

In addition to the reports from the usual committees, there will be a special report of the Permanent Commission on the Revision of the Judicial System and Procedure, by Judge Andrew Cobb, of Athens, Chairman. We have a copy of this report before us and find in it some very interesting suggestions. In addition to a discussion of this report there will be a discussion of the following subjects: "Selection of Judges and Terms of Office;" "Should the City Courts be Abolished? If So, What Should be Substituted?"; "Should the Supreme Court and the Court of Appeals be Consolidated?"

CORRESPONDENCE.

MEANING OF WORD "CONCURRENT" IN THE EIGHTEENTH AMENDMENT.

Editor Central Law Journal:

The reprint of Judge Rellstab's opinion in the case of Feigenspan v. Bodine, in your issue of April 9, suggests, by its length of argument in the effort to evolve a sensible legal construction out of the Eighteenth Amendment, that the Amendment is hopelessly obscure, if the plain meaning of the words used in it is to be departed from.

The word "concurrent" has no novelty in it. It is one of the oldest words in use in American jurisprudence as the result of the fact that, for the first time in the experience of any country, there has been such a thing as two distinct jurisdictions concurrent within the same territory. I refer to the separate jurisdiction of the Federal Courts and the State Courts within the limits of the respective States, in applying in both of them the Common Law and Commercial Law, and in the Federal Courts, the State Laws.

It was not necessary for the court to resort to a dictionary for the solution of the meaning of the word "concurrent" when all of our law dictionaries define that word, supported by citations from authorities going back to the earliest days of the Union.

It is common knowledge that the committees who framed the Eighteenth Amendment, as well as the Congress itself, are composed largely of lawyers, many of them of very great experience, and of national reputation as such.

It is to be presumed, therefore, that Congress used the word "concurrent" in its ordinary legal sense, as defined by the courts ever since the Union existed. As far back as 1831, the time of 2 Stew. and Port., Alabama Supreme Court Reports, Chief Justice Lipscomb defined the meaning of the word "concurrent."

He said in that case on page 15 as follows:

"It is an admitted principle, that where two courts have an equal and *concurrent* jurisdiction, that the one that commences the exercise of its jurisdiction first, has the preference, and is not to be obstructed in the legitimate exercise of its powers by the court that, on the subject matter, *would be only co-ordinate.*"

In other words, under the Eighteenth Amendment, whether the laws of the United States or those of a State shall have the preference in the matter of the enforcement of the article, is purely a question of time, and within the limits of the State, the State Legislature is superior to the Congress of the United States.

Judge Rellstab says (referring to Article VI of the Constitution):

"By reason of this provision such a thing as a legal conflict between the laws of Congress, enacted pursuant to the powers granted or delegated to it, and the legislation of any of the States, is constitutionally impossible."

By that assertion he aims to nullify the second section of the Eighteenth Amendment. He appears to have forgotten that it is an old maxim of construction of statutes and instruments of writing that the later clause of a writing prevails over an earlier clause whenever there is any want of harmony between the two.

Applying that maxim to the Eighteenth Amendment, it is clear that, instead of Article VI of the Constitution controlling the Eighteenth Amendment, the rule is directly opposite.

The Eighteenth Amendment controls Article VI.

Article VI must be so construed as to harmonize with the Eighteenth Amendment, and not the Eighteenth Amendment be construed so as to harmonize with the Article VI.

It is certain that the framers of the Eighteenth Amendment must have had in mind Article VI when they enacted Amendment Eighteen.

The second section of the Eighteenth Amendment reads:

"The Congress and the several States shall have concurrent *power* to enforce this article by appropriate legislation."

The word "power" defined in the Standard Dictionary, among other things as "authority conferred by law to act for himself." "Power is the most general term of those group of words including every quality, property, or faculty by which any change, effect or result is or may be produced; as the *power of the Legislature to enact laws*, etc.

If I am correct, the opinion of the United States District Court here referred to adds only to the obscurity of the Eighteenth Amendment.

Nothing short of a decision of the Supreme Court of the United States can evolve consistency between the Eighteenth Amendment and the rights of the individual sovereign states of this Union, if that Amendment should be held to be valid.

Respectfully,

FREDERICK G. BROMBERG.

Mobile, Ala.

BOOKS RECEIVED.

A Treatise on the Law of Inheritance Taxation. With Practice and Forms. Second Edition. By Lafayette B. Gleason, Attorney for State Comptroller for New York City; and Alexander Otis, of the New York City Bar (Specialist in Inheritance Taxation). Albany and New York City, Matthew Bender & Company. 1919. Price, $10.00. Review will follow.

The Soldier-Lawyer Directory. February, 1920. A list of names of soldier-lawyers, arranged alphabetically, by states and cities, for the United States and Canada, with Honor Roll of those who lost their lives in service. Compiled and edited by R. W. Shackleford, G. B. Zewadski and J. W. Cone, Tampa, Fla. Price, $4.25. The Soldier-Lawyer Directory Company, 420 American Bank Bldg., Tampa, Fla.

HUMOR OF THE LAW.

"I want to be excused," said a worried-looking juryman addressing the judge. "I owe a man $10, and, as he is leaving for a post abroad, to be gone some years, I want to catch him before he gets on board, and pay the $10. It may be my last chance."

"You are excused," returned His Honor in icy tones. "I don't want anybody on the jury who can lie like that."

Col. Robert H. Thompson of Jackson, Miss, who is a sedate, dignified lawyer of recognized standing, had a new office boy who about every week wanted a day off. While black, this boy claimed Irish extraction, and his brogue bore out his contention.

"Sorr, I'd like to get off Saturday."

"What's the matter this time? Your grandmother hasn't died again, surely," asked the Colonel.

"No, sorr; it's loike this, sorr. Oi've a brother who was born blind, sorr, and he's just got his sight and wants to see me, sorr."—*Lawyer and Banker.*

When Theodore Roosevelt was President a man visited him who had a request to make. In his arms he carried a bundle of letters of introduction. He stated his request and closed his argument with these words:

"Mr. President, I am sure that if you do this for me you will please the people of my state. In fact, I could have brought with me a thousand letters more asking you to do it."

"Oh, pshaw," was Roosevelt's blunt reply. "I could get a thousand people in your state to sign a petition to have you hanged."

An unmarried mother had obtained an order of court in one of the Southern states against a well-to-do business man for the payment of certain monies monthly on account of the support of her child, the order providing that he should make this "involuntary donation" until the child became of the age of 14 years. When that day occurred the daughter called for the usual stipend. As it was handed her the gentleman remarked: "Take this to your mother, Bertha, and tell her I am no longer your father."

As the girl turned the money over to her mother she repeated what her "father" had said.

"Well," said the mother, "you go back and tell the gentleman that he never was."—*Lawyer and Banker.*

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Attorney and Client** — Collusion. — The courts will protect an attorney against a collusive settlement of the litigation in fraud of his lien.—Millsap v. Sparks, Ariz., 188 Pac. 135.

2. **Bankruptcy**—Concealment. — The deposit by bankrupts of money in bank in their own name cannot be considered a transfer or concealment to hinder, delay, or defraud creditors, which will bar discharge under Bankruptcy Act, § 14b (4), Comp. St. § 9598.—In re Oliner, U. S. C. C. A., 262 Fed. 734.

3.——False Pretenses.—The giving by a bankrupt of a mortgage on property which he did not own, to secure a note for money borrowed, held not an obtaining of the money upon a materially false statement in writing which bars discharge, under Bankruptcy Act, § 14b (3), Comp. St. § 9598; the debt being one which, under section 17a (2), Comp. St. § 9601, is not released by a discharge.—In re Hudson, U. S. D. C., 262 Fed. 778.

4.——Stockholders.—Officers and stockholders of bankrupt corporation required to replace capital and assets fraudulently withdrawn not entitled to be restored to status quo.—Johnson v. Canfield-Swigart Co., Ill., 126 N. E. 608.

5. **Banks and Banking** — Garnishment. — Trustee of insolvent bank in other state takes title to funds in Illinois subject to remedy of garnishment.—Illinois Trust & Savings Bank v. Northern Bank & Trust Co., Ill., 126 N. E. 533.

6. **Bills and Notes**—Renewal.—A renewal note given for purchase price of land does not change the character of the original debt, and is neither a payment of the old debt nor the creation of a new indebtedness, unless the parties have expressly agreed to that effect.—Cheves v. First Nat. Bank of Gainesville, Fla., 83 So. 870.

7.——Threat of Extortion.—In suit on note, defense that plaintiff's attorney threatened court proceedings to hold up defendant's property and to extort money or a note which defendant did not owe, and to offset plaintiff's indebtedness to defendant on a sale of cattle, whereupon he gave the note in suit, which was without consideration, and alleging duress and asking judgment against plaintiff, was properly stricken.—Miller v. C. M. Keys Commission Co., Ga., 102 S. E. 555.

8. **Boundaries**—Survey. — Ordinarily, where land is sold with reference to a survey made at the time, the survey determines the true boundary and marks the limits of the land to be conveyed.—Swann v. Mills, Tex., 219 S. W. 850.

9. **Brokers**—Dual Agency.—A real estate broker cannot represent both parties to a real estate transaction without their knowledge or consent, and if he attempts to do so he forfeits all right to any compensation from either.—Murphy v. Willis, Ark., 219 S. W. 776.

10.——Exclusive Agency.—Where it was not agreed that a broker's agency for the sale of property should be continued for a definite time, or that it should be an exclusive agency, the owner had the right to make the sale himself, without incurring liability for the commission.—Gammell v. Cox, Ark., 219 S. W. 745.

11.——Revocation.—The authority of an agent to sell land, who had no interest therein, but merely an interest in earning his compensation, was revocable, though the owner had agreed the agency should continue for a fixed period.—Morgan v. Harper, Tex., 219 S. W. 888.

12. **Cancellation of Instruments** — Equity.—Fraud, of which forgery is a glaring example, is one of the principal grounds of equity jurisdiction, and as a general rule equity may decree the cancellation of a written instrument found to be a forgery.—In re Fleming's Estate, Pa., 109 Atl. 265.

13. **Carriers of Goods—Act of God.**—If a carrier accepts goods for shipment with full knowledge floods and washouts on its line and the lines of connecting carriers, it should notify the shipper of the same, or stipulate against the consequences, and if it fails to do so it should not be heard to offer as an excuse that delay in shipment was caused by an act of God.—Gray v. Seaboard Air Line Ry. Co., S. C., 102 S. E. 512.

14.——Draft with Bill of Lading.—Where a consignor drew draft on consignee in favor of consignor's home bank and surrendered to it the bill of lading and received credit on his checking account, and consignee paid draft and received the bill of lading and possession of goods and claimed a defect in quality or quantity, he could not garnishee shipper's interest in proceeds in correspondent bank, which belonged to the bank extending credit, whether it had been checked against or not. — Lampl v. Hawkins, Kansas, 188 Pac. 233.

15.——Initial Carrier.—When one carrier pays the charges of a preceding carrier, it is subrogated to the rights of such carrier, and may demand the entire charges, its own and the first carrier's, before surrendering the shipment. — Hammer Lumber Co. v. Seaboard Air Line Ry., N. C., 102 S. E. 508.

16.——Perishable Freight.—A carrier is not an insurer of perishable freight, if the damage is caused by it perishing, but is an insurer in all other respects, just as if it were not perishable, as where it is injured in a wreck or fire, or from any other cause not the act of God or the public enemy.—Singer v. American Express Co., Mo., 219 S. W. 662.

17.——Special Contract.—A special contract between a carrier and a shipper in consideration of a lower freight rate, providing that for loss or damage the carrier's liability should not exceed a maximum valuation, is not a contract attempting to exempt carrier from liability on account of its own negligence, and, if reasonable and just and fairly entered into by shipper will be upheld.—Lusk v. Durant Nursery Co., Okla., 188 Pac. 104.

18. **Carriers of Live Stock**—Care Taker.—Live stock shipper, permitted by carrier to ride with stock in stock car, was a passenger.—Beasley v. Hines, Ark., 219 S. W. 757.

19.——Twenty-Eight Hour Law.—The receipt of live stock by a railroad company, whose line connected with one over which the stock was being shipped, but formed no part of the through route, and the transporting of such stock with

due diligence to a reasonably convenient stockyard for unloading for feed, water, and rest, held not a violation of the Twenty-Eight Hour Law Comp. St. § 8651), although the stock was confined longer than the time limited.—U. S. v. Cleveland, C., C. & St. L. Ry. Co., Ohio, 262 Fed. 775.

20. **Carriers of Passengers** — Alighting. — Alighting from a slowly moving street car is not negligence as a matter of law.—Sivicek v. Dunham, Mo., 219 S. W. 594.

21.——Negligence.—The fact that the driver of a jitney bus operating as a common carrier permitted a passenger to ride on the step, which was a place of danger, does not disprove that it was negligence per se for plaintiff to ride there, unless the bus was crowded.—Karnitsky v. Machanic, N. J., 109 Atl. 303.

22. **Cemeteries**—Dedication.—A cemetery does not lose its character as such because further interments in it have ceased or become impossible, but remains subject to the use so long as the bodies remain buried, or until they are moved by public authority, friends, or relatives.—Barker v. Hazel-Fain Oil Co., Texas, 219 S. W. 874.

23. **Chattel Mortgages**—Subject of.—Property bought for the express purpose of daily indiscriminate sale to the general public, exposed for such sale at the place of business of a licensed dealer, and over which the dealer is permitted to exercise the dominion of an owner, cannot be made the subject of a valid chattel mortgage, though, as in the case of an automobile, it is of considerable size and value, and capable of identification.—Boice v. Finance & Guaranty Corporation, Va., 102 S. E. 591.

24. **Contracts**—Antenuptial Contract. — Antenuptial contract between father and mother of illegitimate child, whereby mother agreed to accept small weekly payments in full of her claims against the father's estate., having been actually made in contemplation of an immediate separation and desertion of the mother by the father, held illegal and void, and unenforceable against either party.—Cumming v. Cumming, Va., 102 S. E. 572.

25.——Entirety.—Where an employe, paid by the piece, under an agreement to work for a specified term, struck, but was induced to remain until the end of the week on employer's promise to pay for the work done, the agreement, though entire, was several in performance, and employe could sue at once on employer's breach of its promise to pay.—Englander v. Abramson-Kaplan Co., N. J., 109 Atl. 307.

26.——Mutuality.—Though a contract for the sale of coal was not binding while executory because of want of mutuality of obligation, it served to fix the prices which the buyer was bound to pay for coal actually delivered. White Oak Coal Co. v. Ed E. Squier Co., Mo., 219 S. W. 693.

27.——Mutuality.—One of the essential elements of a contract is that there must be mutuality of agreement; that both of the contracting parties must assent to its terms.—Hart-Parr Co. v. Brockreide, Okla., 188 Pac. 113.

28. **Corporations**—Charter Powers.—Corporations can only exercise such power as may be conferred by the legislative bodies creating them, either by express terms or by necessary implication.—North American Union v. Johnson, Ark., 219 S. W. 769.

29.——Contract with Officer.—The rule that a contract between a director and the corporation is voidable at instance of the latter or of its stockholders is not applicable where all interested in corporation, its officers, directors and stockholders, have knowledge of such a contract and consent to it, and where the property acquired thereunder by corporation is used for its benefit.—McKee v. Interstate Oil & Gas Co., Okla., 188 Pac. 109.

30.——Directors.—A mortgage on property of a corporation, made to two of its directors, even though voidable by the corporation, held valid as against a corporation succeeding to its assets, which assumed it by unanimous vote of its directors, who were also sole stockholders. —Geisenberger & Friedler v. Robert York Co., U. S. C. C. A., 262 Fed. 739.

31.——Insolvency.—The directors of an insolvent corporation occupy toward the creditors of the corporation a fiduciary relation, in that the properties of the corporation constitute a fund for the payment of the corporation's debts, which fund the directors are charged with managing to the best interest of the creditors.—Beach v. Williamson, Fla., 83 So. 860.

32. **Courts**—Ancillary Jurisdiction.—A federal court without ancillary jurisdiction of an action at law on a judgment of a court of another district against the surety on the bond of a contractor given under Act Feb. 24, 1905 (Comp. St. § 6923), and in favor of a subcotractor, where the real parties are citizens of the same state and the amount involved is less than $3,000.—U. S. v. Pedarre, U. S. D. C., 262 Fed. 839.

33. **Criminal Law**—Confession.—Where, in a prosecution for murder, it is shown that the defendant, without inducement by promise, threat, or duress, made a confession, such confession is none the less admissible in evidence because made while defendant was in the custody of the arresting police.—State v. Bailey, La., 83 So. 854.

34.——Instructions.—The statute requiring the court in a criminal case to instruct on all questions of law has no application to misdemeanor cases.—State v. Magruder, Mo., 219 S. W. 701.

35.——Presumption of Honesty.—In view of presumption that all men are honest and innocent, mere suspicion will not support a conviction; but where facts and circumstances are relied upon the evidence must be sufficient to negative and be inconsistent with every other rational hypothesis, except that of guilt.—State v. Vandewater, Iowa, 176 N. W. 883.

36.——Recent Possession.—Statement of district attorney that defendant produced no witness to account for his possession of the stolen car was not a violation of his right to have no comment on his failure to testify in his own behalf.—People v. Miller, Cal., 188 Pac. 52.

37.——Wrongful Intent.—The presumption of wrongful intent of a defendant based upon the natural result of his words or acts, is not conclusive, but rebuttable, and this rebutting evidence may take the form of testimony by defendant that he intended no such results.—Bentall v. U. S., U. S. C. C. A., 262 Fed. 744.

38. **Damages**—Quantum of Proof.—Where the existence of a loss is established, absolute certainty in proving its quantum is not required.—Chesapeake & Potomac Telephone Co. of Virginia v. Carless, Va., 102 S. E. 569.

39. **Deeds**—Description of Property.—If parties to a conveyance knew the particular tract by a name which they had adopted for it, the deed to the property by such name was a good description.—Merchant v. Marshfield Realty & Trading Co., Ore., 188 Pac. 174.

40. **Divorce** — Cruel Treatment. — Cold and studied indifference toward a wife and failure to talk to her or to accompany her anywhere, and the spending of evenings with his friends and companions, was cruel treatment entitling the wife to a divorce.—Kreplin v. Kreplin, Wash., 188 Pac. 14.

41. **Equity**—Definition.—The office and definition of "equity" is the correction of that wherein the law, by reason of its universality, is deficient.—Kansas City, to Use of Missouri Pac. R. Co. v. Southern Surety Co., Mo., 219 S. W. 727.

42. **Evidence**—Judicial Notice. — The courts will take judicial notice that the purchasing power of money has greatly decreased in the past 10 years.—Hurst v. Chicago, B. & Q. R. Co., Mo., 219 S. W. 566.

43. **Fraud** — Damages. — To recover damages for misrepresentations inducing a contract, the representations need not have been the sole cause of the contract, but must have been of such nature, weight, and force that without them the contract would not have been made.—Craig v. Shea, Cal., 188 Pac. 73.

44.——Punitive Damages.—Exemplary damages recoverable for wanton, fraudulent representations.—Laughlin v. Hopkinson, Ill., 126 N. E. 591.

45. **Fraudulent Conveyances** — Bulk Sales Law.—It is unnecessary to decide whether the words "stock of merchandise," in Bulk Sales Law, include the store fixtures, sold along with the merchandise, where both parties to the transaction have considered the price to be paid for both as a single fund applicable to payment of the claims of all the seller's creditors and the greater part of it has been so applied. National City Bank v. Huey & Martin Drug Co., S. C., 102 S. E. 516.

46. **Gifts**—Intent.—A gift requires two things; a delivery of the possession of the property to donee, and an intent that the title thereto shall pass immediately to him.—Fox v. Shanley, Conn., 109 Atl. 249.

47 **Highways**—Abutting Owner.—One owning land abutting on highway, there being nothing to the contrary appearing, is to be regarded as the owner of the soil to the middle of the highway, and enjoys over that strip the full privileges of ownership, provided his acts do not interfere with the easement of passage of the public.—Wadsworth v. Town of Middletown, Conn., 109 Atl. 246.

48. **Homicide** — Responsibility for Crime. — Ability to govern conduct in accordance with choice a necessary element of responsibility in cases of paranoia:—People v. Lowhone, Ill., 126 N. E. 620.

49. **Husband and Wife**—Invitee.—If a married woman invited plaintiff on premises where her husband kept a vicious dog, or if plaintiff was there for a lawful purpose without invitation, and such married woman, in the absence of her husband, permitted the dog to run loose on the premises unguarded, knowing that persons were likely to come lawfully on the premises, her negligence in so doing concurred with the negligence of her husband in keeping the dog, rendering her liable for an injury inflicted by the dog.—Carrow v. Haney, Mo., 219 S. W. 710.

50. **Injunction**—Anticipated Injury.—While a court of equity under some conditions may grant injunction to prevent an anticipated injury, it will not do so, unless it can be satisfied from all the circumstances of the case as to the illegality of the acts complained of, and that irreparable injury will result.—City of Salisbury v. Camden Sewer Co., Md., 109 Atl. 333.

51.——Trespass.—The chancery court had jurisdiction of the subject-matter of restraining trespasses on plaintiff's lands if the pleadings raised the issue that defendant trespasser was insolvent.—Gray v. Malone, Ark., 219 S. W. 742.

52. **Insurance** — Forfeiture. — As insurance contracts are prepared by the insurer, conditions therein intended to cause a forfeiture are construed most strongly against the company.—Standard Accident Ins. Co. v. Walker, Va., 102 S. E. 585.

53.——Fraternal Association.—The constitution and by-laws of a mutual benefit fraternal society form the basis of, and constitute part of, the contract of insurance, which measures the obligations of the members and the liability of the association or governing body.—Sovereign Camp, Woodmen of the World v. Newson, Ark., 219 S. W. 759.

54.——Knowledge of Agent.—Knowledge by insurer's agent that insured did not keep the iron safe required by a clause of the policy is knowledge of the company, and if it delivered the policies after the agent had such knowledge it waived the forfeiture for violation of the clause.—Rosenthal-Sloan Millinery Co. v. Hanover Fire Ins. Co., Mo., 219 S. W. 669.

55. **Landlord and Tenant**—Oral Lease.—If an annual rental is reserved by an oral lease, the law will imply a tenancy from year to year, even though the oral lease is for an indefinite time.—Noll v. Moran, Conn., 109 Atl. 241.

56. **Libel and Slander**—Privileged Communication.—Where a member of Liberty Loan committee, during the war with Germany, while soliciting subscriptions to bonds, distributed circulars, prepared by the county council of defense, and claimed to contain a libelous statement concerning plaintiff, who had refused to subscribe, his acts, claimed to be done in discharge of a public duty, were privileged in a limited sense.—McBroom v. Weir, Texas, 219 S. W. 855.

57.——Qualified Privilege. — "Qualified privilege" comprehends all bona fide communications upon any subject-matter in which the author has an interest or a duty to perform to another having a corresponding duty.—Taber v. Aransas Harbor Terminal Ry.., Texas, 219 S. W. 860.

58. **Limitations of Actions**—Demand Vote.—Demand paper is due immediately, and the statute of limitations begins to run from the date of the instrument.—McCollum v. Neimeyer, Ark., 219 S. W. 746.

59.——New Promise.—After a debt is barred by the statute of limitations, a new oral promise to pay it cannot revive the original cause of action, nor constitute a new cause of action, if there was no consideration therefor.—Mortenson v. Knudson, Iowa, 176 N. W. 892.

60.——Note and Mortgage.—The running of limitations against an action on a note secured by a chattel mortgage does not extinguish the obligation created by the note or the covenant in the chattel mortgage to pay the debt.—Lembeck & Betz Eagle Brewing Co. v. Krause, N. J., 109 Atl. 293.

61. **Malicious Prosecution**—Advice of Counsel. —That defendant acted on advice of the counsel does not relieve him from liability for malicious prosecution unless he made a full, fair, and truthful disclosure to counsel and acted in good faith on the advice, so that, where plaintiff denied making an admission which defendant stated to counsel he did make, the jury could find that the advice of counsel was no defense.—Webb v. Byrd, Mo., 219 S. W. 683.

62. **Master and Servant**—Assumption of Risk. —The servant never assumes a risk growing out of the master's negligence, however plain or obvious; the only risk he does assume being that remaining after the master has exercised ordinary care.—Kuhn v. Lusk, Mo., 219 S. W. 638.

63.——Consideration.—A contract by defendant lumber company to give plaintiff employment in a sawmill, if suits by plaintiff, his wife, and stepdaughter against company's doctor and bookkeeper for slander and failure to render professional services were dismissed, which suits were said to be disturbing the company's business, is not supported by a sufficient consideration.—Rasnick v. W. M. Ritter Lumber Co., Ky., 219 S. W. 801.

64.——Express Contract.—A complaint alleging that, at the request of defendant, plaintiff performed services for the sum of $60 per month and her board, the reasonable value thereof, which sum and board defendant agreed to furnish and pay, states a cause of action for the reasonable value of the services, permitting proof of such value, and is not founded upon an express contract.—Miller v. Howard, Ore., 188 Pac. 160.

65. **Mechanics' Lien.** — Priority. — A subsequent purchaser of property, with actual notice of a contractor's lien, takes subject thereto, so that the lien is properly recorded and the foreclosure proceeding properly brought against original owner, and the subsequent purchaser is not a necessary party thereto.—Oglethorpe Savings & Trust Co. v. Morgan, Ga., 102 S. E. 528.

66. **Mines and Minerals**—Equitable Mortgage. —An instrument containing an agreement to pay money when certain mining claims and mill sites were sold out of the first money received from the sale, and providing that a special lien was thereby created on the property to secure the payment of the obligation, created an equitable mortgage.—Stephen v. Patterson, Ariz., 188 Pac. 131.

67.——Sub-Surface. — Where the mineral estate has been separated from the surface, the former must support the latter as a common-law burden, from which it cannot be relieved except by apt words or necessary implication. —Lenox Coal Co. v. Duncan-Spangler Coal Co., Pa., 109 Atl. 282.

68.——Valid Location.—The general rule is that, where a person has held and worked a location and mining claim for a period to the time prescribed by the statute of limitations for mining claims of the state where it is situated, he has a right equivalent to that of a valid location.—Newport Mining Co. v. Bead Lake Gold-Copper Mining Co., Wash., 188 Pac. 27.

69. **Mortgages**—Defined.—A condition indispensable to holding a deed to be a mortgage is that there shall have been a debt to secure, or some liability against which the grantee is to be guarded.—Carson v. Lee, Mo., 219 S. W. 629.

70. **Municipal Corporations**—Ordinances.—Ordinances interfering with use of property must be for public good and reasonable.—McCray v. City of Chicago, Ill., 126 N. E. 557.

71. **Negligence.**—Inevitable Accident.—Where the facts shown are such as might reasonably support the inference that the accident might have resulted from a mere casualty, or from acts of others than defendant, or from defendant, or from joint conduct of plaintiff and defendant, no presumption arises that it was occasioned by negligence charged against defendant.—Atlanta Coca-Cola Bottling Co. v. Danneman, Ga., 102 S. E. 542.

72.——Invitee.—One sent to install a machine on the purchaser's premises is an invitee to whom the owner owes the duty of keeping the premises covered by the invitation in a reasonably safe condition.—Ellington v. Ricks, N. C., 102 S. E. 510.

73.——Ordinary Care.—"Ordinary care" is such care as would ordinarily be exercised by an ordinarily careful person under the same or similar circumstances. — Jackson v. Southwestern Bell Telephone Co., Mo., S. W. 655.

74.——Res Ipsa Loquitur.—A petition, pleading specific negligence, excludes reliance on the doctrine of res ipsa loquitur. Byers v. Essex Inv. Co., Mo., 119 S. W. 570.

75. **Partnership** — Holding Out. — One who holds himself out as a partner, though in fact he may not be, is liable to a creditor who knew of such holding out and acted on the assumption and belief that he was a partner in extending credit.—Drake Hardware Co. v. Bragg, Mo., 219 S. W. 717.

76. **Perjury**—Former Acquittal.—An acquittal on an indictment charging larceny of an automobile is not a bar to a subsequent conviction for perjury committed by defendant as a witness on his own behalf on the former trial by swearing falsely that he had not seen and did not have such automobile in his possession. —Yarbrough v. State, Fla., 83 So. 873.

77. **Principal and Agent**—Revocation. — Authority of an agent, when revocable, may be revoked by a solemn instrument under seal, by a public and formal announcement or proclamation, or by a simple and private declaration.—Morgan v. Harper, Texas, 219 S. W. 888.

78. **Principal and Surety** — Revocation.—Unless the terms of a continuing guaranty forbid it, the law writes into it a power on the part of the guarantor to revoke it.—Gimbel Bros. v. Mitchell, Mo., 219 S. W. 676.

79. **Sales**—Misrepresentation.—The value of a legal work being largely dependent on its early completion and delivery, an oral representation by an agent of the seller that the work was already in plate and ready for the press was a representation of an existing material fact.—American Law Book Co. v. Fulwiler, Texas, 219 S. W. 881.

80.——Rescission.—Where one sells personally under an express warranty, and receives a note, reciting it to be a purchase-money note, and the seller thereafter accepts a return of the property on account of defects, the latter transaction is a complete rescission of the former contract, so that the note for the original property becomes void. Evans v. Lott, Ga., 102 S. E. 556.

81. **Telegraphs and Telephones** — Interstate Message—An interstate telegraph company may limit its liability in damages for negligence of its servants in transmitting unrepeated interstate messages involving different rates.—Western Union Telegraph Co. v. McDavid, Tex., 219 S. W. 853.

82. **Trusts**—Personal Liability.—One holding property himself and refused to recognize plainally liable on a contract to pay a commission to a broker for effecting a sale thereof.—Breid v. Mintrup, Mo., 219 S. W. 703.

83.——Statute of Frauds. — Where plaintiff verbally agreed with defendant that they would purchase property jointly or in partnership, and defendant with intent to defraud bought the property himself and refused to recognize plaintiff's right therein, no purchase from either of any real estate or interest therein was involved, so that statute of frauds did not apply.—Goodrich v. Wilson, Kans., 188 Pac. 225

84. **Vendor and Purchaser**—Consideration.—Where a conveyance of land is made in consideration of future support of a third person, no vendor's lien arises.—Murphy v. Whetstone, Ore., 188 Pac. 191.

85.——Option Contract.—Time is of the essence of an option contract to purchase property, especially where the property is fluctuating in value, and equity will not relieve against a threatened forfeiture for failure to exercise the option within the time specified.—Weiss v. Claborn, Texas, 219 S. W. 883.

86. **Waters and Water Courses** — Beneficial Use.—One actually diverting water under a claim of appropriation for a useful or beneficial purpose cannot by such diversion acquire any right to divert more water than is reasonably necessary for such use or purpose.—Stinson Canal & Irrigation Co. v. Lemoore Canal & Irrigation Co., Cal., 188 Pac. 77.

87. **Wills**—Burden of Proof.—Contestants have burden of showing by a preponderance of the evidence their allegations of fraud and undue influence, which induced testatrix to make the will as she did.—Rice v. Rice, Ore., 188 Pac. 181.

88.——Collateral Attack.—A probated will is not subject to collateral attack and vests full title to the realty in the devisees named therein. —Simpson v. Lehmann, Mo., 219 S. W. 608.

89.——Domicile.—Will may be probated in a state other than that in which testator is domiciled, but such probate is strictly a proceeding in rem, affecting only the property within such state, with no extraterritorial force, and does not entitle will to admission in the state of the domicile under the statutes, or under the good-faith and credit clause of the Constitution.—In re Longshore's Will, Iowa, 176 N. W. 902.

90.——General Legacy.—A gift of "every species of personal property I may possess at my death not named in my will' is a general legacy —In re Wiggins' Will, N. C., 102 S. E. 499.

91.——Intention.—In construing a will the first and foremost rule is that it shall be so construed as to give effect to the intention of the testator, and such rule of construction is emphasized by Rev. St. 1909, §§ 583 and 2569.—Gibson v. Gibson, Mo., 219 S. W. 561.

92.——Joint Will.—Joint will not revocable without notice.—Buehrle v. Buehrle, Ill., 126 N. E. 539.

93.——Testamentary Capacity.—Where testator knows and comprehends the transaction in which he is engaged, and the nature and extent of the property comprising his estate, and recollects the objects of his bounty, the disposition he makes of his estate will not be interfered with on any ground of testamentary incapacity. —In re Rutherford's Estate, Wash., 188 Pac. 27.

94.——Undue Influence.—In a will contest involving questions of undue influence and testamentary capacity, a previous will of the testatrix was admissible.—Yant v. Charles, Mo., 219 S. W. 572.